UNITED STATES DISTRICT COURT

DISTRICT OF MAINE

KHAMPHANH CHANTHANOUNSY	)	
	)	
Plaintiff	)	
	)	
v.	)	Civil No. 01-124-P-C
	)	
INS,	)	
	)	
Defendant	)	

RECOMMENDED DECISION

Plaintiff, an INS detainee, initiated this action on May 2, 2001, by filing an application to proceed *in forma pauperis* and a pleading captioned "Application for Writ of Habeas Corpus." Upon review of the pleading I determined that plaintiff's complaints related to the conditions of his confinement at the Cumberland County Jail[1] and that in truth he apparently wanted to bring a complaint alleging that unknown actors, both federal and state, had violated his constitutional rights. Plaintiff did not challenge the legal basis of his detention, but suggested that he was subjected to "cruel and unusual punishment" because of the lack of adequate medical care.

I gave Plaintiff the opportunity to convert this action into a civil complaint for violation of his civil rights (Docket No. 3). He was granted until May 31, 2001 to file an

[1] Plaintiff's primary complaint relates to the medical care and treatment he has received. He accuses jail personnel, medical staff, and INS officials of deliberately ignoring his repeated requests for medical assistance. Such conduct, if properly alleged with supporting nonconclusory facts, can amount to a constitutional deprivation. The claim rises to the level of a constitutional violation only if defendants exhibited "'deliberate indifference to serious medical needs.'" Watson v. Caton, 984 F.2d 537, 540 (1st Cir. 1993) (quoting Estelle v. Gamble, 429 U.S. 97, 106 (1976)). "The courts have consistently refused to create constitutional claims out of disagreements between prisoners and doctors about the proper course of a prisoner's medical treatment, or to conclude that simple medical malpractice rises to the level of cruel and unusual punishment." Id.

amended complaint clarifying his claims. Plaintiff has not responded to my prior order. I therefore construe his complaint as a petition for habeas corpus relief filed pursuant to 28 U.S.C. § 2241.

The document before the court does not comply with 28 U.S.C. § 2242 in that it does not "allege the facts concerning the applicant's commitment or detention, the name of the person who has custody over him and by virtue of what claim or authority, if known." Furthermore, I can find no basis in the application upon which the district court could grant habeas relief even if the application were in the proper form. He states no legal basis to challenge the fact of confinement and complains in only the most general terms about the quality of medical care.[2] Petitioner asks that he be transferred back to Vermont rather than held in Maine. Pursuant to 8 U.S.C. § 1231(g)(1) Congress has placed the responsibility of determining where aliens are to be detained within the sound discretion of the Attorney General. This court has no jurisdiction to review that discretionary decision made by the Attorney General. 8 U.S.C. § 1252(a)(2)(B)(ii); Avramenkov v. I.N.S., 99 F. Supp. 2d 210, 213 (D. Conn. 2000).

[2] The propriety of the use of a writ of habeas corpus to obtain review of the conditions of confinement, as distinct from the fact or length of the confinement itself, is an open question. See Bell v. Wolfish, 441 U.S. 520, 527 (1979). Pre-Bell First Circuit law suggests that § 2241 is available to challenge conditions of confinement in this Circuit. Miller v. United States, 564 F.2d 103, 105 (1st Cir. 1977). Miller has been cited with approval in two unpublished opinions without any consideration of Bell or decisions from other circuits. See Connor v. United States, 1994 U.S. App. LEXIS 2650; United States v. Palmer-Contreras, 1998 U.S. App. LEXIS 23290. At least one court has held that even if the conditions of petitioners' confinement are unconstitutional, a habeas action is not the proper remedy. Price v. Bamberg, 845 F. Supp. 825, 827 (M.D. Ala. 1993). Even if we assume that habeas relief should be available to an INS detainee challenging the conditions of his confinement, his claim is not ripe for judicial review until administrative procedures have been exhausted. Roche-Despaigne v. True, 1998 WL 682260 (D. Kan. 1998). Petitioner makes no mention of administrative procedures other than to allege that "petitioner was giving *(sic)* no medication, not until he start complaint and argue."

Conclusion

I hereby order that the petitioner's application for leave to proceed *in forma pauperis* be **GRANTED** and recommend that the application for Writ of Habeas Corpus be **DISMISSED without prejudice.**

NOTICE

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) for which *de novo* review by the district court is sought, together with a supporting memorandum, within ten (10) days of being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to *de novo* review by the district court and to appeal the district court's order.

_____
Margaret J. Kravchuk
U.S. Magistrate Judge

Dated June 5, 2001

U.S. District Court

District of Maine (Portland)

CIVIL DOCKET FOR CASE #: 01-CV-124

CHANTHANOUNSY v. INS Filed: 05/02/01

Assigned to: JUDGE GENE CARTER

Demand: $0,000 Nature of Suit: 550

Lead Docket: None Jurisdiction: Federal Question

Dkt# in other court: None

Cause: 42:1983 Prisoner Civil Rights

KHAMPHANH CHANTHANOUNSY KHAMPHANH CHANTHANOUNSY

plaintiff [COR LD NTC] [PRO SE]

CUMBERLAND COUNTY JAIL, 50 COUNTY WAY, PORTLAND, ME 04102

v.

INS

defendant